

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

NANCY E. NIPPER-PHELPS,)
)
)
Plaintiff,)
v.) Case No. CIV-21-28-JFH-SPS
)
)
KILOLO KIJAKAZI,)
Commissioner of the Social)
Security Administration,)
)
)
Defendant.)

REPORT AND RECOMMENDATION

Plaintiff Nancy E. Nipper-Phelps was the prevailing party in this action under the Social Security Act. Plaintiff now seeks an award of attorney's fees in the amount of \$6,277.40 for 28.70 hours of work, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d). *See* Docket No. 25. The Government has not responded to the motion and the response deadline has passed. The Court has now referred the motion to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1). *See* Docket No. 27. For the reasons set forth below, the undersigned Magistrate Judge recommends that the Plaintiff be awarded the requested fees under the EAJA.

Upon review of the record herein, the undersigned Magistrate Judge finds that the requested amount is reasonable and that the Commissioner should be ordered to pay it to the Plaintiff as the prevailing party herein. *See* 28 U.S.C. § 2412(d)(1)(A) ("Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in

tort)[.]"); *see also Manning v. Astrue*, 510 F.3d 1246, 1251 (10th Cir. 2007) ("The EAJA therefore permits attorney's fees reimbursement to financially eligible prevailing parties, who make a proper application, and not to their attorneys.").

Accordingly, the undersigned Magistrate Judge hereby PROPOSES the findings set forth above and RECOMMENDS that the Plaintiff's Motion for Award of Attorney Fees Pursuant to the *Equal Access to Justice Act* [Docket No. 25] be GRANTED and that the Court award attorney's fees in the amount of \$6,277.50 to the Plaintiff as the prevailing party herein. The undersigned Magistrate Judge notes that if the Plaintiff's attorney is subsequently awarded any fees pursuant to 42 U.S.C. § 406(b)(1), said attorney shall refund the smaller amount of such fees to the Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986). Any objection to this Report and Recommendation must be filed within fourteen days. *See Fed. R. Civ. P. 72(b)(2)*.

DATED this 2nd day of December, 2022.



STEVEN P. SHREDER
UNITED STATES MAGISTRATE JUDGE